

REMARKS

Claims 2-20 and 25-29 are pending in the present application. In the Final Office Action mailed May 10, 2007, the Examiner rejected claims 16, 18-20, 25, 26, and 29 under 35 U.S.C. §102(b) as being anticipated by the publication titled “OMEGAMAKER® Temperature Test Kit” by OMEGA®. The Examiner next rejected claims 16, 19, 20, 25, 26, and 29 under 35 U.S.C. §102(b) as being anticipated by Kossnar et al. (USP 6,022,159). Claim 17 is rejected under 35 U.S.C. §103(a) as being unpatentable over OMEGA® in view of Peterson (USP 1,603,713).

Claims 2-15 are allowed. Claims 27 and 28 were indicated as containing allowable subject matter. Such indication is appreciated.

Rejections Under 35 U.S.C. §102(b) over “OMEGAMAKER® Temperature Test Kit”

The Examiner rejected claim 16 under 35 U.S.C. §102(b) as being anticipated by OMEGAMARKER®. Claim 16 calls for, in part, a dual temperature indicator stick apparatus including a means for retaining a first means for indicating a first temperature to a second means for indicating a second temperature in a side-by-side relationship, wherein the means for retaining the first means to the second means is configured to fixedly connect the first and second means to form a one-piece dual temperature indicator stick apparatus. In rejecting claim 16 under §102(b), the Examiner stated that “OMEGA® discloses... means for retaining the first means to the second means [] configured to fixedly connect the first and second means to form a one-piece dual temperature indicator stick apparatus (the case, the first, and the second means form a one-piece apparatus when connected together)....” *Office Action*, May 10, 2007, p. 2. Applicant respectfully disagrees. Specifically, Applicant believes that OMEGA fails to teach or disclose means for retaining a first means for indicating a first temperature to a second means for indicating a second temperature that is configured to fixedly connect the first and second means to form a one-piece dual temperature indicator stick apparatus.

OMEGAMARKER® is a temperature test kit that includes a plurality of individual temperature indicating sticks. As the reference discloses, “the standard kit includes ten individual temperature-sensitive crayons plus a holder for each crayon all in a self-contained case.” *Emphasis added*. That is, the reference itself discloses individual temperature-sensitive crayons disposed in a case and not a one-piece dual temperature indicator stick assembly. One of ordinary skill in the art will readily recognize that a plurality of individual temperature-sensitive

crayons positioned in a case is not the same as, or equivalent to, the one-piece dual temperature indicator stick assembly as presently claimed.

Furthermore, it is apparent that the self-contained case in OMEGA® does not fixedly connect the temperature-sensitive crayons contained therein to form a one-piece dual temperature indicator stick apparatus as called for in claim 16. That is, the temperature-sensitive crayons must be removed from the case in order to be used by an operator, and as such, they are not fixedly connected within the case so as to form a one-piece dual temperature indicator stick apparatus. Assuming *arguendo* that the case fixedly connects the temperature-sensitive crayons contained therein to form a one-piece dual temperature indicator stick apparatus, as the Examiner has asserted, one would then be left with a temperature indicator stick apparatus that would include 10 temperature-sensitive crayons connected to one another. Clearly this is not what is taught or disclosed by OMEGA®, rather, OMEGA® teaches a case that contains 10 individual temperature-sensitive crayons that are removable therefrom and are not fixedly connected to one another by the case so as to form a one-piece dual temperature indicator stick apparatus. As such, Applicant respectfully believes that claim 16, and the claims dependent therefrom, are patentably distinct over OMEGA®.

The Examiner also rejected claim 25 under 35 U.S.C. §102(b) as being anticipated by OMEGAMARKER®. While Applicant disagrees, to advance prosecution, Applicant elects to incorporate the allowable subject matter of claim 27 and intervening claim 26.

Rejections Under 35 U.S.C. §102(b) over Kossnar et al.

The Examiner rejected claim 16 under 35 U.S.C. §102(b) as being anticipated by Kossnar et al. Claim 16 calls for, in part, a dual temperature indicator stick apparatus that includes a first means for indicating a first temperature, a second means for indicating a second temperature and a means for retaining the first means to the second means in a side-by-side relationship. In rejecting claim 16 over Kossnar, the Examiner stated that “Kossnar discloses an assembly comprising: first means for indicating a first temperature; second means for indicating a second temperature....” *Office Action*, supra at 3. Applicant respectfully disagrees and believes that the Examiner has mischaracterized the disclosure of Kossnar et al. as teaching that which is called for in claim 16.

Kossnar et al. discloses a pen holder that is capable of holding two writing utensils in their individual capacity in a side-by-side relationship. *Kossnar et al.*, Abstract. That is, the holder of Kossnar et al. is disclosed as holding pens. There is simply no teaching in Kossnar et al. that the pen holder disclosed therein contains means for indicating first and second temperatures as is called for in claim 16. As set forth in MPEP §2131, “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” MPEP §2131 (emphasis added). Clearly, Kossnar et al. does not teach or disclose each and every element called for in claim 16, as there is no disclosure of any means for indicating first and second temperatures in the cited reference. As such, at least for those reasons argued above, that which is called for in claim 16 is not shown or disclosed in Kossnar et al. Therefore, Appellant respectfully believes that claim 16, and the claims dependent therefrom, are patentably distinct over Kossnar et al.

Therefore, in light of at least the foregoing, Applicant respectfully believes that the present application is now in condition for allowance. As a result, Applicant respectfully requests timely issuance of a Notice of Allowance for claims 2-20, 25, 28, and 29.

Applicant appreciates the Examiner’s consideration of these Amendments and Remarks and cordially invites the Examiner to call the undersigned, should the Examiner consider any matters unresolved.

Respectfully submitted,

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General Authorization and Extension of Time

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 50-2623. Should no proper payment be enclosed herewith, as by credit card authorization being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 50-2623. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extensions under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 50-2623. Please consider this a general authorization to charge any fee that is due in this case, if not otherwise timely paid, to Deposit Account No. 50-2623.

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